

IN SENATE OF THE UNITED STATES.

JANUARY 27, 1846.

Submitted, and ordered to be printed.

Mr. WEBSTER made the following

REPORT:

[To accompany bill S. No. 62.]

The Committee on the Judiciary, to whom was referred the petition of Henry Gardner and others, report :

That after an attentive examination of the claim, and of the past action of the Senate upon it, they have concluded to adopt, as best embodying the facts upon which the claim rests, a report made on the 27th of December, 1842, and to append thereto an historical synopsis of the case, which they find among the papers accompanying the petition.

The committee have no doubt that the petitioners are entitled to relief, and they would have been inclined to award it by a direct appropriation of money in the treasury, which, but for the erroneous decision of a board of commissioners, would long since have been paid to them ; but as the Senate has heretofore, by a deliberate vote, ordered its committee to report a bill directing a further examination at the Treasury Department as to the actual expenditures of the petitioners, for which they are entitled to compensation, this committee have felt themselves bound by those instructions, and they report a bill in conformity thereto. They annex hereto the following report made at the 3d session of the 27th Congress.

IN SENATE OF THE UNITED STATES, December 27, 1842.

[Mr. BERRIEN submitted the following report :

The Committee on the Judiciary, to whom was referred the petition of Henry Gardner and others, beg leave to submit the following report :

Your committee find, on examination, that this claim has been long pending before Congress, and has been frequently reported on at large by different committees. Entertaining no doubt of the correctness of the claim, the committee would adopt, as expressive of their views, the report of the Hon. Mr. King, of Georgia, adopting and incorporating a previous report of the Hon. Mr. Smith, of Connecticut, herewith submitted. They also report the bill with an amendment.

IN SENATE OF THE UNITED STATES, *February 20, 1837.*

Mr. KING, of Georgia, made the following report, with Senate bill No. 233.

The Committee on the Judiciary, to whom was referred the petition of Thomas L. Winthrop and others, directors of an association called the New England Mississippi Land Company, report:

That, as the subject of the petition has been very frequently before the Senate, they do not deem themselves competent to shed any new light upon the subject. Various and conflicting reports have been made; but committees heretofore charged with the subject have most frequently come to a conclusion favorable to the claim of the petitioners; and several bills have been reported for their relief. As the committee believe that the petitioners are clearly entitled to relief, they adopt the last report made by a committee in their favor, which this committee believe presents very fairly and fully the merits of the claim.

IN SENATE OF THE UNITED STATES, *March 22, 1834.*

Mr. SMITH made the following report, with Senate bill No. 130.

The Committee on the Judiciary, to whom was referred the petition of Thomas L. Winthrop and others, directors of an association called the New England Mississippi Land Company, report:

That the subject embraced in their petition has been frequently before the Senate, and bills for their relief have more than once been reported. For the information of the Senate, they submit a history of the facts out of which this application arises.

On the 26th of January, 1795, the legislature of Georgia passed an act under which the governor of the State made a grant or sale of a large tract of land lying between the Mississippi and Tombigbee rivers, in the then Territory of Mississippi, to a number of persons who were associated under the name of the Georgia Mississippi Company.

On the 26th of January, 1796, this company, by their agents, entered into a contract with certain persons in Boston, for the sale to them of eleven millions three hundred and eighty thousand acres of the said land, at ten cents per acre. The stipulations of the contract were, that two cents per acre should be paid in cash on the 1st of May, 1796, and for this payment, being one-fifth of the whole, all the purchasers were held mutually responsible. It was agreed that on the 12th of February a deed should be executed by the grantors, and placed in the hands of George R. Minot, esq., to be held by him *in escrow*, and delivered to the purchasers or their agents on the said 1st of May, in case the said cash payment should be made. The balance of the purchase money was to be secured by the notes of the individual purchasers, to be well endorsed and made payable at various periods; the last of which was to be on the 1st of May, 1799. The notes were given in accordance with this agreement; a deed was executed and placed *in escrow*; the cash payment was made, and, on the 1st of May,

1796, Mr. Minot, by direction of the grantors, delivered over the deed to the agents of the grantees or purchasers.

On the 13th of February, 1796, the legislature of Georgia passed an act rescinding the former act, believing it to have been obtained through improper influences, and therefore void. A knowledge of this fact, however, did not reach Boston till the 12th of March following, and of which the petitioners had no notice until after said purchase.

After the purchase was made, but before the delivery of the deed, the purchasers formed themselves into an association under the name of the New England Mississippi Land Company, and executed sundry articles of agreement and rules relative to the management and control of the said lands; and, among other things, agreed that the several purchasers should execute deeds for their respective shares in the land to three persons therein named, to hold in trust, and with power to sell and dispose of them agreeably to the order of the directors chosen by the company. These trustees being thus clothed with the legal estate, were to give each proprietor a certificate in a certain prescribed form, stating his amount of interest in the land, and this certificate was to be "complete evidence to such person of his right in said purchase," and was to be transferable by endorsement.

Thus stood the title to these lands prior to the cession made by Georgia to the United States in 1802. It was a title which is declared by the Supreme Court in the case of *Brown and Gilman*, 4th Wheaton, p. 256, to be, throughout, a strictly legal title in these purchasers. By the articles of agreement and cession of the 24th of April, 1802, it was provided that the United States might appropriate not exceeding five millions of acres for the purpose of satisfying the claims upon it, commonly known as the Yazoo claims, and including those of the said New England Mississippi Company. In pursuance of this provision, an act of Congress was passed on the 3d of March, 1803, appropriating for the purpose for which they were reserved, so much of the said five millions of acres as should be necessary to satisfy the said claims. This act prohibited the application of these lands to the satisfaction of any other claims but those the evidence of which shall have been exhibited on or before the first day of January subsequent thereto, to the Secretary of State, and recorded in his office.

Pursuant to the provisions of the act last mentioned, the claims to the said land were exhibited to the Secretary of State, including those of the present petitioners; but the final passage of the act providing for their adjustment and satisfaction was delayed till the year 1814.

On the 31st March, 1814, Congress passed an act entitled "An act providing for the indemnification of certain claimants of public lands in the Mississippi territory."

Among the provisions of this act were the following:

First. The President was authorized and required to cause to be issued from the Treasury of the United States, to such claimants, respectively, as had exhibited their claims agreeably to the act of 1803, certificates of stock payable out of moneys arising from the sale of the public lands to the persons claiming in the name of, or under the Georgia Mississippi Company, a sum not exceeding one million five hundred and fifty thousand dollars.

Second. The claimants might file in the office of the Secretary of State a release of all their claims to the United States, and an assignment and transfer to the United States of their claims to any money deposited or paid

to the State of Georgia, "such release and assignment to take effect on the *indemnification* of the claimants according to the provisions of that act."

Third. Commissioners were to be, and were appointed, "to adjudge and finally determine upon all controversies arising from such claims so released as aforesaid, which may be found to conflict with and be adverse to each other; and, also, to adjudge and determine upon all such claims under the aforesaid act, or pretended act of Georgia, as may be found to have accrued to the United States by operation of law."

The releases, assignment, and transfer to the United States required by this act were duly executed by the petitioners.

The commissioners appointed were Thomas Swann, esq., Francis S. Key, and John Law, esqrs., of the District of Columbia. Before this board, the petitioners, as trustees of the New England Mississippi Land Company, appeared and claimed, as the persons entitled thereto, the one million five hundred and fifty thousand dollars directed by the act to be issued to those representing the Georgia Mississippi Company. Their claim to indemnity was resisted on behalf of the Georgia Mississippi Company, on the ground that the consideration money for said land had not been wholly paid, and that therefore they were in equity entitled to the indemnity provided by the act of Congress. It appeared on the investigation that, of the notes given, about one-tenth part, say \$95,760, then remained unpaid, and belonged to the original grantees, the said Georgia Mississippi Company; most of the members of whom (to wit, three fourths in amount) had surrendered to the State of Georgia, and received from the treasury of that State, the sum they had paid; but the other members of that company had released to the United States, in virtue of the said act of Congress of the 31st of March, 1814, and they claimed, in *conflict* with the petitioners, such proportion of the indemnity as was equal to their interest in said notes. The notes unpaid were chiefly those of a Mr. Wetmore, who, as early as 1800, had assigned all his interest in the said land, and is represented to have availed himself of the benefit of the old bankrupt act of the United States. The commissioners decided that, although no mortgage had been given therefor, and notwithstanding that the signers had so assigned their interest in the said lands, and although the conveyance from the Georgia Mississippi Company was absolute, and the deed delivered by their written direction to the grantees, upon their giving security as aforesaid, these notes *created a lien upon said lands*; and, in consequence of such decision, they deducted from the claim of the petitioners the sum of \$130,424, and distributed the same as follows:

To the individuals of the Georgia Company who released as aforesaid, they awarded the sum of \$35,022 as their proportion of interest in said notes, and the residue, say \$95,760, they ordered to remain in the treasury, as representing the owners of said notes, who had surrendered to Georgia as aforesaid, and as thus "*accruing by operation of law*" to the United States.

By this decision, to which the petitioners object as erroneous, they think themselves aggrieved, and they ask to have the said sum of \$130,425 paid to them by the United States, or that their release to the extent of 950,600 acres of land, being the proportion which would be covered by that sum at the original price, cancelled, so that they may assert their title to the lands in the court of law.

These are the facts of the case, as far as they appear material to a just

understanding of the claim; and they present, for the consideration of the committee, the broad question whether the petitioners are entitled to the relief they seek.

It may be assumed that the petitioners, in making their release to the United States under the act of the 31st March, 1814, and relying upon the indemnity thereby provided, looked for their security to an execution of the act upon the well known and universally received principles of law. To such an execution of it, they had a right to look. They knew what they had to release, and that the release was a preliminary; but, for the consideration or equivalent which they were to receive in return, they had no security but in the faith of the government, and a confidence that the trusts reposed in its agents would be executed agreeably to those known and intelligible principles. Their title to the land was one which the Supreme Court in the case of *Brown and Gilman*, 4th Wheaton, 256, have declared to be a legal one. Mr. Justice Story says in that case, "the estate acquired by the first grantees [the petitioners] under the conveyance to them by the Georgia Mississippi Company, was, beyond all question, a legal, and not merely an equitable estate." And the court further say, that there was no pretence of any intermediate incumbrance upon this estate, they being unanimously of opinion that the unpaid notes alluded to did not form a *lien* upon the land.

The petitioners then were possessed of a title judicially decided to be an unincumbered legal title, which they might have held; but, for purposes important, in the view of Congress, it was thought desirable that this title should be acquired by the United States. The government held out inducements to the claimants to part with their rights in it; it appropriated a large sum of money to pay, or "make indemnification" to them for it. And as it was seen that claims apparently conflicting might be preferred, it appointed a commission, with power—

First. "To adjudge and finally determine upon all controversies arising from such claims so released as aforesaid, which may be found to conflict with, and be adverse to, each other."

Second. "To adjudge and determine upon all such claims under the aforesaid act, or pretended act, of the State of Georgia, as may be found to have accrued to the United States by operation of law."

These were their powers. Did the commissioners err, as alleged by the petitioners, in the exercise of them, and thereby prejudice them? That they did err in their judgment upon the law of the case, we are saved the necessity of an argument to show, since it is so declared by the Supreme Court, and even admitted by the surviving commissioners themselves. [See the certificates of Thomas Swann and F. S. Key, esqrs., hereto annexed.] And the committee are satisfied that this decision of the court is in accordance with the general principles of law applicable to the subject. If it be so, it seems necessarily to follow that a right to this land, to the extent of the claim in question, which the commissioners suppose to have "accrued to the United States by operation of law," did not so accrue, and that, consequently, the United States hold it without consideration—because without having "*indemnified*" those from whom they have taken title.

It only remains to inquire whether this error gives to the petitioners a right to redress, and to that mode of redress which they seek. The money which they claim, it will be recollected, is in the treasury of the United States. Under the act of 1814, it was within the control of the commission-

ers, subject to their adjudication, agreeably to the act, and the sound principles of law by which it was to be interpreted. They (erroneously, as they admit) award it to the United States, who still hold the money.

It has been objected to this claim, that, as the said act contemplated a *final* end and termination of all controversies, &c., respecting claims released on the judgment of the commissioners, there can be no appeal from their decision. The committee think this objection valid as to that part of the claim which seeks a repayment by the United States of the money awarded to the individual members of the Georgia Company, whose claims were found "to conflict with, and be adverse to," those of the petitioners. Upon such conflicting claims, the commissioners appear to have been empowered to decide *finally*, and their decisions in relation to them must stand. But in regard to such portion of this claim as is supposed to have accrued to the United States "by operation of law," no such conclusive effect is given by the act to the award of the commissioners; and even if it were intended to be final, the committee do not think it becoming to the dignity of the United States to defend their possession of this fund by a judgment which is acknowledged to be erroneous.

Before closing their report, the committee would advert briefly to the specific prayer made by the petitioners. It is, that they may be paid the amount of money which they allege to have been wrongfully withheld from them by the commissioners, or that they may be reinstated in their original title to such portion of the land released to the United States as this money represents. Their agents have urged the reasonableness of this alternative by a reference to the terms of the act, and of the release under it. The release and assignment to the United States were "*to take effect on the indemnification of the claimants, according to the provisions of that act*;" and they allege that if indemnification were not made, the release would have no effect. The committee regard the act of 1814 as intended, first, to secure to the United States a transfer of all the title which the claimants had in this land, and an assignment of their rights as against Georgia; and, secondly, by the above clause, to assure to the claimants themselves adequate justice in case the indemnification should not be made. The release was made, as it was required to be, in advance; but, to give it effect agreeably to the terms of the act, indemnification should follow, which, as we have seen to a certain extent, has not been the case. Can it be said then to be a valid release? Can the United States equitably hold both the money and the land? The committee cannot believe that it was the intention of Congress to entrap claimants into a surrender of their rights on a promise of compensation, and then take advantage of an error committed by their servants to deny that compensation. On the contrary, they think it is the part of justice that this error should be corrected, and the petitioners reinstated in their rights as effectually as they would have been if an unexceptionable judgment had been rendered by the commissioners. This can now be done only by awarding to them the money which, under the decision complained of, went into the treasury of the United States. And the committee believing, from the view they have taken of the subject, that they are entitled to that relief, do, in accordance with that opinion, report a bill in their favor.

The committee concur in the foregoing report, and have not been able to discover the force of any of the objections that they find have been urged

against the claim. The United States have received the relinquishment of a good and legal title to 950,600 acres of land, for which the petitioners have never received one cent—when it is admitted that, but for a plain, palpable, and acknowledged error, they should have received \$130,425. This amount has actually been recovered from the petitioners, by virtue of the very title which they have relinquished to the United States, and for which they have received nothing. The committee conceive that it is sufficiently oppressive to the petitioners to compel them to give credit to the United States for the sum of \$35,022 paid to those who had no right to receive it. But, as the United States have actually paid out the latter sum by virtue of the erroneous decree, the committee concur in previous reports, deducting that sum; but as for that part of the said sum of \$130,425, which it is admitted *ought to have been awarded to the petitioners*, but which still remains in the treasury by virtue of an acknowledged error, and by which error the United States have been in no way damaged, they do not think it can be withheld from the petitioners, upon any principle of justice or good faith, and, therefore, for that amount, they report a bill.

No. 1.

Decree of commissioners on Yazoo claims, Georgia Mississippi Company.

This company having sold all the lands included in their grant (excepting the reservations for citizens) to certain individuals in Boston, associated under the name of the New England Mississippi Land Company, the whole indemnity provided by the act of Congress for claimants under this grant was demanded by the trustees of the latter company in behalf of the members thereof; the trustees having released to the United States all the title of the company to the land comprehended in the grant.

This claim was opposed, first, by the scripholders of the original Georgia Mississippi Company, claiming under certain certificates issued to the proprietors under that grant before the sale made to the New England Mississippi Land Company; which certificates were produced by them, and released to the United States. The foundation of this claim rested on the allegation that the New England purchasers had not fully paid the purchase-money for the land, and that the original shareholders had a lien on the land for whatever balance was due. The board considered that the principles of equity sanction this opposition; and having ascertained, from the evidence exhibited, that the sum of \$95,760 remained due to the original company for the purchase, which, upon the terms of the sale, amounted to 957,600 acres, they decreed, upon the grounds stated more particularly in their first decree in this company, that \$130,425 12—the proportion of indemnity to which that quantity of land would be entitled—should be deducted from the amount claimed by the New England Mississippi Land Company.

The claim of the New England Company was further opposed in behalf of the United States, who claimed to be considered as representing the interests of such of the old Georgia Mississippi shareholders as have surrendered their claims to the State of Georgia, and drawn their proportions of the original purchase-money from the treasury of that State, and as thereby entitled to retain, out of the sum deducted as above stated from the indemnity claimed by the New England Company, such proportions as those shareholders would have been entitled to had they not surrendered such

claims. The board decreed that the United States were entitled to represent the interest of these original surrendered shares, and that the sum stated—of \$130,425 12—could neither be awarded exclusively to the shareholders who released to the United States, nor lessened by the New England Company's retaining to the amount of the shares surrendered to Georgia, but that the United States, representing the surrendered shares, should take equally with the releasing shareholders. By this decree the above sum was proportioned as follows :

The shares of Georgia Mississippi Company released to the
 United States - - - - - \$50,608 48
 To the United States, representing 284 surrendered shares - 123,903 94

The claim of the trustees of the New England Company was still further opposed by some of the shareholders in that company who produced their certificates to the board, and executed, individually, releases to the United States, and prayed to have their respective proportions of the indemnity awarded to them separately, and protested against its being awarded generally to the trustees for the benefit of the company.

The board considered themselves bound to grant this application, for the reasons stated in their second decree under this grant of June 29, 1815, but at the same time thought the demand of the trustees—that these individual claimants should bear their proportion of the expenses incurred by the company, if allowed to receive their proportions of the indemnity separately—just and reasonable.

These claimants, holding shares amounting to — acres, were, therefore, by the award of the board, entitled to receive \$259,132 72 as their proportion of the indemnity, deducting their proportion of the expenses, and subject to some other charges for expenses, which they settled with the trustees.

The following statement shows the particular distribution, according to the principles above stated, of the indemnity provided by the act for claims under this grant, and the proportion reserved to the United States :

Total indemnity provided for this company by act of Congress \$1,550,000 00

Awarded as follows :

To the releasors of Georgia Mississippi Company's certificates	\$50,608 48
To the individual releasors of the New England Mississippi certificates	259,132 72
To the trustees of the New England Mississippi Land Company	1,077,561 73
To A. Jackson, for his interest in the sale made to the New England Mississippi Land Company	24,831 90
Reserved to the United States, for 284 certificates Georgia Mississippi, surrendered to Georgia	123,903 94
Reserved to the United States, for incalculable fractions in the divisions of the indemnity	23
Amount of W. Hampton's 32 shares, claimed in behalf of the United States, and deducted from the claim of the United States against him	13,961 00
	<u>1,550,000 00</u>

True copy from the records. Teste :

RICHARD WALLACH,

Late Secretary to Board of Com'rs on Yazoo claims.

The certificates issued by the Georgia Mississippi Company were generally for four shares each, and the sum awarded to the holder of such certificates of four shares was \$1,745 12½.

The fund out of which the holders of Georgia Mississippi Company's certificates were paid, and the surrenders to the State of Georgia in the said company, consisted of the sum of \$130,425 11, reserved from the claim of the New England Mississippi Land Company for unpaid notes of certain original purchasers in that company, and the amount of 691,667 acres of the New England Mississippi Land Company's certificates in the hands of Amasa Jackson, making together the amount of \$213,305 55, deducting for allowance to the specie payment to the New England Mississippi Company \$2,339 22.

Statement in figures of the disposition of the above sum of \$213,305 55.

To Georgia Mississippi Company's certificates, including those surrendered to the State of Georgia under Hampton's certificates, and those released to the United States	\$188,473 42
Awarded to Amasa Jackson	24,831 90
	<hr/> 213,305 32 <hr/>

Attest,

RICHARD WALLACH,

Late Secretary of the Board of Commissioners on Yazoo claims.

No. 2.

Certificate of Thomas Swann, Commissioner.

Having acted as one of the commissioners under the act of Congress providing for the indemnification of certain claimants of public lands in the Mississippi Territory, I do certify that the board of commissioners did reject the claim for indemnification made by the New England Land Company for that portion of land which was the subject of controversy in the case decided by the Supreme Court between Gilman and Brown, and reported in the 4th volume of Wheaton's Reports. The ground upon which this rejection was made, was an opinion which the commissioners then entertained, that the title of this land, through its whole course of transfer, was an equitable title, and the original purchase-money not having been paid for it, they considered that the debt was a lien upon the land, and that the claimant had no right to the indemnification until the lien was discharged.

I recollect that our information of the laws of Georgia upon the subject of land conveyances was but imperfect; but, in the discussion of this claim before the board, it seemed to be given up that the title, in all its stages, was an equitable title, and so we finally thought. The decision, however, of this question by the Supreme Court is otherwise: they have decided that the title was a legal one throughout; and that question being so settled, I have no hesitation in saying that I should, under such an impression of the law, have awarded the indemnification to the claimants, and I doubt not but that my associates would have concurred with me in this opinion. I now

consider this a fair subject for the interposition of the legislature, and should deem it reasonable that the claim should be allowed.

THOS. SWANN.

ALEXANDRIA, *December 30, 1822.*

No. 3.

Certificate of F. S. Key, Commissioner.

I have examined, as carefully as I could upon so short a notice, the decree of the Yazoo commissioners of 8th March, 1816, upon the claim of the New England Mississippi Company, by which the sum of \$130,425 12 was deducted from the indemnity claimed by that company, and awarded to the Georgia Mississippi Company, on the ground of a lien asserted by the latter company for part of the purchase-money due for the land which had been granted to the Georgia Company, and by them sold out to the persons composing the New England Mississippi Company.

The Supreme Court of the United States, in the case of Brown and Gilman, express an opinion that the claim of the Georgia Company to this lien could not be supported. I have not seen the record sent up to the Supreme Court in this case, and do not see, in the printed report of the cause, that the same documents and evidence, showing the agreements and correspondence of the two companies upon this subject, were before the court that had been laid before the commissioners. If they were, I suppose it would be right to conclude that the commissioners, and not the Supreme Court, had erred in their decision. The board, in their decree of 8th March, 1816, refer to the agreements and correspondence of the parties, and the record in the case of Brown and Gilman will show whether they were introduced into that case.

F. S. KEY.

GEORGETOWN, *January 2, 1823.*

It is now represented to me that, by the laws of Georgia, a vendor has no lien upon land sold when he takes a note for the purchase-money. If this be the case, the commissioners certainly erred in their decision. If such a ground had been supported before them, they would certainly have decided against the lien.

F. S. KEY.

GEORGETOWN, *January 2, 1823.*

HISTORICAL SYNOPSIS.

Senate bill (No. 62) for the relief of Henry Gardner and others, directors of an association called the New England Mississippi Land Company.

The grounds on which the above claim is presented, are substantially these, as will appear from numerous reports and documents on this subject :

In 1795, the State of Georgia sold 35,000,000 acres of land in the Mississippi Territory to four private companies. One of these (the Georgia Mississippi Company) conveyed their entire interest (viz: in 11,380,000 acres, at 10 cents per acre) to the New England Mississippi Land Company, composed of persons principally residing in Massachusetts.

The New England Company, on receiving the deeds, advanced \$340,800 in cash, which was all the company was holden for. The balance of the purchase-money, by the terms of the contract, was paid by satisfactory negotiable notes of individual members of the company. Each member received from the company scrip, or certificates of title, to the amount of the individual purchase by each. All the purchase notes were paid, except the notes of William and Seth Wetmore, representing about 950,000 acres of land; and \$45,000 of William Wetmore's notes were paid, after his failure, by his endorser.

In February, 1796, the legislature of Georgia rescinded the previous act authorizing the sale of these lands; but the New England Company had advanced the money and completed the purchase in good faith, before they had any knowledge of the rescinding act.

After the rescinding act, (viz. in 1802,) Georgia ceded the whole of these lands to the United States, reserving 5,000,000 acres to be distributed by the United States to quiet the claims of the companies that had purchased under that act.

James Madison, Albert Gallatin, and Levi Lincoln, were the commissioners who purchased of Georgia for the United States; and they recommended to Congress to make indemnity to the several companies "*nearly as much as has been paid in the whole by all the present claimants.*" (See Public Lands, vol. 1, p. 134.)

When the act of cession from Georgia to the United States was in contemplation, agents of the New England Mississippi Land Company presented their claims to the above-named commissioners, and proposed to memorialize Congress, but forbore to do so, upon the commissioners engaging, if the claimants would not interfere to embarrass the negotiation with Georgia, to provide for them a liberal indemnity by the terms of the cession. (Public Lands, vol. 2, p. 880.)

In pursuance of this pledge and the contract with Georgia, the United States, in 1803, set apart the five million acres of land to quiet the claims of the said companies; denying that they had any title in law, and admitting only an equitable title under the rescinded sale from Georgia.

The proceeds of these five million acres of land thus became, by the consent of Georgia and the act of the United States, a trust fund, as so much of the consideration from the United States to Georgia, to be applied to quiet the claims of the companies that had purchased of Georgia.

The apportionment of this fund to the claimants, for whose uses it had been set apart by Georgia and the United States, *after* the rescinding of the sale to the Yazoo companies, had no connexion with the original rescinded sale;

and the United States was bound, in good faith, to apply the whole of that fund to the purposes designated by Georgia in the act of cession to the United States.

Accordingly, by an act of Congress of March 31, 1814, three commissioners were appointed to distribute to the said companies the proceeds of the five million acres of land; and they were required first to release to the United States all title and claim to the lands they held from Georgia; which release, by the terms of the act, was "*to take effect on indemnification of the claimants*, according to the provisions of the act." (Laws relating to Public Lands, p. 649)

The same act provided:

"Sec. 9. That if any persons claiming lands under the act of Georgia, shall refuse to compromise and make settlement of all such claims, in conformity with the provisions of this act, the United States are declared exonerated and discharged from all such claims, and the same are forever barred."

It was, therefore, a compromise compulsory upon the New England Company, when it was supposed by them, and was affirmed by the United States, that the company held no *legal* title to the lands, after the act of Georgia rescinding the sale to the Georgia Mississippi Land Company.

The New England Company complied with the terms of the act of Congress, and released their title to the United States, relying on the pledge of indemnification.

The commissioners (Messrs. Madison, Gallatin, and Lincoln) apportioned, in 1802, the sum of \$1,550,000 to the New England Company, as their share of the indemnification; and the same sum was set apart for them by the act of Congress of March 31, 1814.

But the commissioners under the act of 1814, (Messrs. Swann, Key, and Law,) by an admitted error in their distribution, paid all the claimants their full shares, except the New England Company, and deducted from the sum appropriated to that company, \$130,425. Of this sum, \$35,022 was decreed and paid to individuals of the Georgia Company, instead of the New England Company, their grantees; and the residue, \$95,403, was left in the treasury of the United States, and has never been paid out to any of the claimants. To whom does this sum retained by the United States justly belong?

From the period of this decision in 1816, until recently, the New England Company have claimed of Congress the whole \$130,425, withheld by the commissioners. But the United States has paid out \$35,022 of that sum, though to persons not entitled to receive it. To remove this objection, that part of the claim is not now insisted on, and, by the bill now reported, and which has twice passed the Senate, is excluded.

The balance of \$95,403 is in the treasury, and was placed there by an acknowledged erroneous decision of the commissioners under the act of 1814.

They decided that the unpaid notes of William and Seth Wetmore, which were given to the Georgia Company by those individuals, though not binding on the New England Company, constituted a lien upon about 950,000 acres of land for which those notes were given in payment; and they rejected the certificates which had been issued by the company, corresponding to those unpaid notes, and which certificates, issued to the whole amount of each individual's purchase, whether paid for in cash or notes,

bound the company as "complete evidence to the holder of his right in said purchase."

After this decision of the commissioners in 1816, a holder of three of these rejected certificates, originating from Wetmore's purchase, sued the New England Company, in the United States' court, October, 1817; and in 1819 the Supreme Court of the United States set aside the decree of the commissioners as erroneous, and gave judgment for the amount of the rejected certificates, against the New England Mississippi Land Company. The case is reported in 4th Wheaton, 256—*Mary Gilman vs. Samuel Brown and others*.

The New England Company defended that suit, and set up the decree of the United States commissioners as final against the holders of the rejected scrip; but the Supreme Court held that the title of the New England Company in the lands purchased of the Georgia Company was a legal and valid title, and not merely a claim in equity; and that the laws of Georgia allowing no lien on lands paid for by negotiable notes, the holders of the scrip under Wetmore were entitled to recover. It thus appears that the title which the New England Company had released to the United States, under the compulsory act of 1814, was in law a good and valid title to 11,380,000 acres of land.

In consequence of this judgment, the New England Company were compelled to pay, and did pay, to the holders of the rejected scrip, the amount which the United States commissioners had withheld.

The New England Company then sued the agent of their grantors (the Georgia Company) to recover back the amount so paid. (7th Wheaton's Reports, 233, *Brown vs. Jackson*.) They failed in that suit, although it was proved, as appears by the report, that "the members of the company, represented by the directors of the New England Company, had been obliged to pay upwards of \$80,000 out of their own indemnity, to the holders of the certificates in the company, which were considered bad by the commissioners."

The New England Company then petitioned Congress for redress, December 24, 1822, claiming the whole of the \$130,425 withheld from them by the commissioners, and have since presented their claim at every regular session of Congress. A majority of the Committee on the Judiciary, February 11, 1823, reported adversely to the claim, on the ground that the decree, though erroneous, was final. But on February 24, 1825, at the 2d session of the 18th Congress, the Senate instructed the same committee to bring in a bill for the relief of the petitioners.

Two reports from the Judiciary Committee, against the claim in this form, were made on the above grounds, February 11, 1823, and February 10, 1824. Numerous reports have since been made, and uniformly in its favor, by the Judiciary Committee of the Senate, viz :

- 19th Congress, 1st session, by Mr. Mills, of Massachusetts, January 17, 1826.
- 2d session, by Mr. Robbins, of Rhode Island.
- 20th Congress, 1st session, by Mr. Seymour, of Vermont, December 31, 1827.
- 2d session, by Mr. Berrien, of Georgia, December 31, 1828.
- 21st Congress, 1st session, by Mr. Rowan, of Ohio, March 31, 1830.
- 2d session, by Mr. McKinley, of Alabama, January 17, 1831.
- 22d Congress, by Mr. Hayne, of South Carolina, January 18, 1832.
- 23d Congress, by Mr. Smith, of Connecticut, March 22, 1834, and January 12, 1834.

24th Congress, by Mr. King, of Georgia, February 20, 1837.

25th Congress, by Mr. Grundy, of Tennessee, January 23, 1838. The bill was then recommitted with instructions; and February 9, 1838, reported by Mr. Clayton, of Delaware, in its present form, and passed the Senate. It was reported to the House, without amendment, by Mr. Garland, of Virginia, from the Judiciary Committee, June 6, 1838, but was not reached.

3d session, the bill was reported by Mr. Pierce, of New Hampshire, January 8, 1839.

26th Congress, 1st session, by Mr. Strange, of North Carolina, May 18, 1840.

2d session, by Mr. Wall, of New Jersey, January 28, 1841.

27th Congress, by Mr. Berrien, of Georgia, May 20, 1842; and again, by the same, December 27, 1842.

28th Congress, by Mr. Berrien, of Georgia, January 30, 1844, in its present form, requiring an auditing of the claim, and passed the Senate May 16, 1844; and was reported to the House by Mr. Saunders, of North Carolina, from the Judiciary Committee, but for want of time did not receive the action of the House.

At the 2d session of the 28th Congress, the same bill was reported in the House by Mr. Vinton, from the Judiciary Committee, and was not acted on for want of time.

Of the foregoing twenty-four reports, all but two were in favor of the claim; and no report has been made against it in its present form.

The only objection presented in any report has been, that the decree of the commissioners, though admitted to be erroneous, was to be final by the terms of the act of 1814. This objection is answered on page 6 of the Senate report which accompanies the present bill, as follows:

"The committee think this objection valid as to that part of the claim which seeks a repayment by the United States of the money awarded to the individual members of the Georgia Company, (viz: \$30,022,) whose claims were found to 'conflict with, and be adverse to,' those of the petitioners. But in regard to such portion of this claim as is supposed to have accrued to the United States 'by operation of law,' no such conclusive effect is given by the act to the award of the commissioners; and even if it were intended to be final, the committee do not think it becoming to the dignity of the United States to defend their possession of this fund by a judgment which is acknowledged to be erroneous."

The decree of the commissioners, under the distribution act of 1814, is not only manifestly erroneous in fact, and so decided in law by the Supreme Court of the United States in *Gilman vs. Brown*, but the error has been admitted by the commissioners.

Attached to the report of the Senate committee above quoted, are the certificates of two of the commissioners, (the third having deceased,) that their award was made under mistake, and ought to be corrected. One of them (Mr. Swann) says: "I now consider this a fair subject for the interposition of the legislature, and should deem it reasonable that the claim should be allowed;" and the other (Mr. Key) says, upon the facts since ascertained: "the commissioners certainly erred in their decision."

It is this acknowledged error, made by agents of the United States in its own favor, and in the selection of whom, or the terms of submission to their

award, the New England Company, who suffer by it, had no voice, that Congress is now asked to rectify.

Under that erroneous decision, the United States holds 950,000 acres of land, by no title valid in law, but the conveyance made by force of the peremptory act of 1814 from the New England Company, in ignorance of their rights, before the Supreme Court had established the validity of their title; and the United States also retains in its treasury the price of that land, out of the indemnity fund derived from Georgia, and set apart for the New England Company by the act of 1814.

The United States is not answerable to its citizens in its courts of law, and its sense of justice can be reached only through Congress. Can it, in justice or equity, withhold both the land and the money from the petitioners?

The bill before the Senate is strictly guarded. It requires the Secretary of the Treasury to ascertain the amount of money actually paid by the petitioners in consequence of the decision of the Supreme Court against them, to the holders of the certificates which were rejected by the commissioners; and authorizes the Secretary of the Treasury to pay the amount thus ascertained, upon delivery of such certificates of stock, or proof of their payment and loss, and on indemnifying the United States against all loss on account of the said certificates, and executing a release of all claims to the United States.

Under this bill, the petitioners can receive only the precise sum they shall prove they have paid out, by the reversal of the decree of the commissioners, in the decision of the Supreme Court in *Gilman vs. Brown*, without interest on the sum thus taken from them in 1819; and in no event can they realize the principal of the sum which they actually paid for these lands more than forty years ago. A generation has passed away since this claim had its origin, but it still remains in the hands of its original holders or their legal representatives.

That the petitioners ought not to suffer prejudice in their claim from the original transaction in regard to the Yazoo purchase, has been uniformly shown by the numerous reports in their favor.

As early as March, 1814, before the passage of the act of indemnification, the committee who recommended that act investigated this subject, and through their chairman, (Mr. Oakley,) say, in their report, "that it satisfactorily appears to the committee, as far as their inquiries have been extended, that the present claimants, or those under whom they hold, were bona-fide purchasers of the immediate grantees of Georgia, without notice of any fraud or corruption in the original grant."

The New England Company is the only purchaser of those grantees which has not received the indemnity provided for them; all the other companies that purchased of Georgia having received the full amount apportioned to them by the act of 1814.

The obvious merits of this claim are thus set forth in the report of the Judiciary Committee of the Senate in 1837, by Mr. King, of Georgia:

"The committee have not been able to discover the force of any of the objections that they find have been urged against the claim. The United States have received the relinquishment of a *good and legal title to 950,600 acres of land, for which the petitioners have never received one cent*—when it is admitted that, but for a plain, palpable, and acknowledged error, they

should have received \$130,425. This amount has actually been recovered from the petitioners, by virtue of the very title which they have relinquished to the United States, and for which they have received nothing. The committee conceive that it is sufficiently oppressive to the petitioners to compel them to give credit to the United States for the sum of \$35,022 paid to those who had no right to receive it. But, as the United States have actually paid out the latter sum by virtue of the erroneous decree, the committee concur in previous reports, deducting that sum; but as for that part of the said sum of \$130,425, which it is admitted *ought to have been awarded to the petitioners*, but which still remains in the treasury by virtue of an acknowledged error, *and by which error the United States have been in no way damaged*, they do not think it can be withheld from the petitioners, upon any principle of justice or of good faith; and, therefore, for that amount, they report a bill."